

Introduced by Senator Murray

January 14, 2005

An act to add Section 22947.9 to the Business and Professions Code, relating to computer spyware.

LEGISLATIVE COUNSEL'S DIGEST

SB 92, as amended, Murray. Computer spyware: penalties.

Existing law prohibits a person or entity from, with actual knowledge, conscious avoidance of actual knowledge, or willfully, causing computer software to be copied onto a computer in California and using the software to (1) take control of the computer, as specified, (2) modify certain settings relating to the computer's access to or use of the Internet, as specified, (3) collect, through intentionally deceptive means, personally identifiable information, as defined, (4) prevent, without authorization, an authorized user's reasonable efforts to block the installation of or disable software, as specified, (5) intentionally misrepresent that the software will be uninstalled or disabled by an authorized user's action, or (6) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus software installed on the computer. Existing law also prohibits a person or entity that is not an authorized user from inducing an authorized user to install a software component by intentionally misrepresenting that it is necessary for security or privacy or in order to open, view, or play a particular type of content. Existing law prohibits a person or entity that is not an authorized user from deceptively causing the copying and execution on the computer of software components with the intent of causing an authorized user to use components in a way that violates any of these prohibitions.

This bill would, with specified exceptions, authorize the recipient of spyware or software transmitted in violation of these prohibitions ~~or the, an Internet service provider who suffers direct injury as a result of or reasonably incurs necessary expenditures in response to a violation, the Attorney General, or a district attorney to bring an action to recover actual damages, and would authorize these parties to recover liquidated damages of \$1,000 per violation. The bill would also provide for an award of reasonable attorney's fees and costs to a prevailing plaintiff and specified statutory damages.~~ The bill would *also* make the violation of the prohibitions a crime, punishable as either a misdemeanor or felony. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22947.9 is added to the Business and
- 2 Professions Code, to read:
- 3 22947.9. (a) (1) In addition to any other remedies provided
- 4 by this chapter or by any other provisions of law, ~~a person who~~
- 5 ~~has spyware installed in violation of this chapter or receives~~
- 6 ~~computer software containing spyware in violation of this~~
- 7 ~~chapter, or the person's Internet service provider, may bring an~~
- 8 ~~action against the person or entity that violated this chapter to~~
- 9 ~~recover either or both of the following:~~
- 10 (A) Actual damages.
- 11 (B) ~~Liquidated damages of one thousand dollars (\$1,000) for~~
- 12 ~~each instance of spyware installed, or computer software~~
- 13 ~~containing spyware provided, in violation of this chapter.~~
- 14 (2) ~~The recipient or the Internet service provider, if the~~
- 15 ~~prevailing plaintiff, may also recover reasonable attorney's fees~~
- 16 ~~and costs.~~

1 ~~(b)~~ the following persons may bring an action against a person
2 or entity that has violated this chapter:

3 (A) The Attorney General.

4 (B) A district attorney.

5 (C) An individual who has spyware installed in violation of
6 this chapter or who receives computer software containing
7 spyware in violation of this chapter.

8 (D) An Internet service provider that suffers direct injury as a
9 result of, or reasonably incurs necessary expenditures in
10 response to, the installation or receipt of spyware in violation of
11 this chapter, whether the direct violation was against the Internet
12 service provider or a customer.

13 (b) An action brought under this section may seek actual
14 damages and statutory damages of one thousand dollars (\$1,000)
15 for each instance of spyware installed or computer software
16 containing spyware received in violation of this chapter. An
17 Internet service provider may only recover statutory damages for
18 a violation against a customer when the Internet service provider
19 has suffered a direct injury or incurred a necessary expenditure
20 in response to that violation.

21 (c) A violation of this chapter is a crime, punishable either as a
22 misdemeanor or a felony.

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.